

F836

(Rev. 173, Issued: 11-22-17, Effective: 11-28-17, Implementation: 11-28-17)

§483.70(a) Licensure.

A facility must be licensed under applicable State and local law.

§483.70(b) Compliance with Federal, State, and Local Laws and Professional Standards.

The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

§483.70(c) Relationship to Other HHS Regulations.

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR part 80); nondiscrimination on the basis of disability (45 CFR part 84); nondiscrimination on the basis of age (45 CFR part 91); nondiscrimination on the basis of race, color, national origin, sex, age, or disability (45 CFR part 92); protection of human subjects of research (45 CFR part 46); and fraud and abuse (42 CFR part 455) and protection of individually identifiable health information (45 CFR parts 160 and 164). Violations of such other provisions may result in a finding of noncompliance with this paragraph.

DEFINITIONS §483.70(a)-(c)

“Accepted professional standards and principles” means Federal, State and local laws or professional licensure standards.

An **“authority having jurisdiction”** is the public agency, i.e., Federal, State or local, or official(s) having the authority to make a determination of noncompliance, and is responsible for providing and signing official correspondence notifying the facility or professional of their final adverse action.

GUIDANCE §483.70(a)-(c)

This regulation and guidance only applies to actions taken under State licensure authority or other Federal HHS agencies as defined in the regulation, it does NOT include any federal CMS enforcement actions as required at 42 CFR Part §488.

PROCEDURES: §483.70(a)-(c)

Facility licenses, permits, and approvals must be provided upon request if necessary to determine compliance with these requirements. Surveyors may not interpret or enforce another agency’s requirements. If surveyors identify a situation indicating that the facility or any professional providing services may not be in compliance with a State or local law, regulation, Code and/or standard, refer that information to the authority having jurisdiction for their follow-up action. The Centers for Medicare & Medicaid Services

(CMS), Regional Office (RO) will assist you to contact the appropriate Federal agency to refer your concerns. Do not delay a survey waiting for confirmation of receipt from another agency or authority having jurisdiction.

If surveyors determined **and** received confirmation from the authority having jurisdiction that a final adverse action has been taken, then the facility could be found to not meet the requirements at §483.70(b) or (c) and a deficiency may be cited here. A final adverse action includes an action imposed by the authority having jurisdiction and is not under appeal or litigation by the facility or the professional providing services in the facility.

Do not cite this tag:

- When the authority having jurisdiction **has not** taken a final adverse action;
- To simply cite non-compliance with State or local licensure requirements unless final adverse action from the authority having jurisdiction has been confirmed; or
- As past non-compliance if, at the time of the current survey, the facility or professional is in compliance with the Federal, State or local law, regulation, code and /or standard but was found not to be in compliance with those requirements during a time before the current survey. If there is a question, confirm the facility's current compliance status with the authority having jurisdiction.

KEY ELEMENTS OF NONCOMPLIANCE

To cite deficient practice at F836, the surveyor's investigation will generally show that the facility failed to do any one of the following:

- Hold a current license from the State or other applicable authority to operate as a nursing home and this information has been verified with the appropriate authority; **or**
- Provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to any professional providing services in the facility, whether temporary or permanent.